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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ORTIZ CRIADO, JORGE L

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/501,441	Applicant(s) HENDRIKS ET AL.	
	Examiner JORGE L. ORTIZ CRIADO	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8 and 11-16 is/are rejected.
- 7) ☒ Claim(s) 6, 9 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

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- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The abstract of the disclosure is objected to because the language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, the form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.

Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 5 and 8 objected to because of the following informalities: the words "polarization" used in the claims should be "polarization". Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 the recitation “substantially of the type(s)” extends the scope of the expression so as to render it indefinite, because it was unclear what “type” is intended to convey.

Claim 2 also recites the expression "and/or" renders the claim indefinite, because it is not clear what is intended to encompass.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 8 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee U.S. Patent Application Publication 2001/0050895 in view of EP 1022731 to Arai et al.

In regard to claim 1, Lee discloses an optical scanning device for scanning a first information layer by means of a first radiation beam having a first wavelength, a second information layer by means of a second radiation beam having a second wavelength and, and wherein said first and second wavelengths substantially differ from each other, the device comprising: a radiation source for emitting said first, second beams consecutively or simultaneously, an objective lens system for converging said first, second beams on the positions of said first, second layers, and a phase structure 450 with a non-periodic stepped profile, arranged in the optical path of said first, second beams, the structure including a plurality of steps

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with different heights for forming said non-periodic stepped profile, characterized in that said stepped profile is designed for introducing a first wavefront modification, a second wavefront modification for said first and second wavelengths, respectively, wherein at least one of said first, second and third wavefront modifications is of a type different from the others, the phase structure includes birefringent material sensitive to said first and second polarizations where at least one of said first and second polarizations differs from the others (Figs.8, 9; [0060]-[0068])..

Lee teaches the uses of different radiation sources with different polarizations and that introduce wavefront modifications using the phase structure such designed having plurality of steps and sensitive to polarizations, but does not disclose of the use of a third radiation beam of a third wavelength and that the phase structure designed for having a third radiation as well.

However, designing a phase structure having non-periodic structure that can be designed for having a third radiation beam that introduce wavefront aberration is well known in the art and is evidenced for example by Arai et al. (see Figs. 47-48; [0212]; [0477]).

Hence, it would have been obvious to one of an ordinary skill in the art at the time of the invention to include a third radiation source of a third wavelength to record and reproduce information of a third layer or a third recording medium and such design the structure to compensate or introduce wavefront so as to compensate for aberration, as desired, for instance making it compatible with at least three different kind of disk, as taught by Arai et al.

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Regarding claims 2, 3, 4, 5, 7, 8 in the combination outlined above meets the features recited (see for example Lee; refers to the wavefronts recited Figs. 5, 9 [0047]; [0062]-[0063]; or refers to Figs. 91-97 of Arai et al.).

Regarding claims 11, in the combination outlined above meet the features recited (see Lee Fig. 8; [0063]).

Regarding claims 12, in the combination outlined above meet the features recited (see Arai et al. Fig. 47).

Regarding claim 13, in the combination outlined above meet the features recited (see Lee Fig. 9).

Regarding claim 14, Official Notice is take that features recited are well known in the art.

Regarding claims 15 and 16, claims 15 and 16 correspond the phase structure claimed in claim 1 and the corresponding lens provided with the phase structure and are rejected for the same reasons of obviousness as used in the above rejections.

Allowable Subject Matter

Claims 6, 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JORGE L. ORTIZ CRIADO whose telephone number is (571)272-7624. The examiner can normally be reached on Mon.-Fri 10:00 am- 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jorge L Ortiz-Criado/
Patent Examiner, Art Unit 2627